

UNITED STATES DEPARTMENT OF AGRICULTURE

2015 AUG -7 AM 11: 08

BEFORE THE SECRETARY OF AGRICULTURE

RECEIVED

In re:) AWA Docket No. 15-0105
)
SANTA CRUZ BIOTECHNOLOGY, INC.,)
a Delaware corporation,)
)
Respondent.)

There is reason to believe that the respondent named herein has willfully violated the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.)(AWA or Act), and the regulations and standards issued thereunder (9 C.F.R. § 1.1 et seq.)(Regulations and Standards). Therefore, the Administrator of the Animal and Plant Health Inspection Service (APHIS) issues this complaint alleging the following:

JURISDICTIONAL ALLEGATIONS

1. Santa Cruz Biotechnology, Inc., is a Delaware corporation (No. 2267992) whose Delaware agent for service of process is United Corporate Services, Inc., 874 Walker Road, Suite C, Dover, Delaware 19904. Respondent does business in California (No. C1696010), and respondent's agent for service of process in California is Matt Mullin, 2145 Delaware Avenue, Santa Cruz, California 95060.

2. At all times mentioned herein, respondent was a research facility, as that term is defined in the Act and the Regulations, and held AWA registration number 93-R-0380.

3. At all times mentioned herein, respondent was a dealer, as that term is defined in the Act and the Regulations, and held AWA license number 93-B-0192.

ALLEGATIONS REGARDING SIZE OF BUSINESS, GRAVITY OF VIOLATIONS, GOOD FAITH, AND HISTORY OF PREVIOUS VIOLATIONS

4. In 2010, respondent represented to APHIS that it held 12,864 animals, in 2011,

respondent represented that it held 17,537 animals, in 2012, respondent represented that it held 15,933 animals, in 2013, respondent represented that it held 15,648 animals, and in 2014, respondent represented that it held 9,139 animals.

5. The violations alleged herein involve, *inter alia*, repeated failures to provide minimally-adequate and expeditious veterinary care and treatment to animals, to observe animals regularly and to report timely information about animal health problems to respondent's attending veterinarian, and to have access to emergency veterinary care, and, most recently, after suffering for hours, a goat was euthanized by veterinary tech personnel, using a captive bolt gun and no secondary euthanasia method, because no veterinarian was available.

6. Respondent has demonstrated bad faith by misleading APHIS personnel about the existence of an undisclosed location where respondent housed regulated animals, which nondisclosure precluded inspection of that location and those animals.

7. On or about July 10, 2005, respondent resolved alleged violations documented from October 10, 2002, through December 9, 2004, by entering into a stipulation pursuant to 9 C.F.R. § 4.11, and paying a civil penalty of \$4,600. Thereafter, respondent has been repeatedly cited by APHIS for noncompliance with the Regulations and Standards.

ALLEGED VIOLATIONS

8. On or about the following dates, respondent failed to provide adequate veterinary care to animals and/or failed to establish programs of adequate veterinary care that included the availability of appropriate facilities, personnel, equipment, equipment and services, the use of appropriate methods to prevent, control, and treat diseases and injuries and the availability of emergency care, and/or daily observation of all animals and a mechanism of direct and frequent

communication in order to convey timely and accurate information about animals to the attending veterinarian, and/or adequate guidance to personnel involved in animal care, in violation of the veterinary care Regulations applicable to research facilities, 9 C.F.R. § 2.33, and in willful violation of the veterinary care Regulations applicable to dealers, 9 C.F.R. § 2.40, as follows:

a. May 5, 2012, through June 26, 2012. Respondent failed to provide adequate veterinary care to a goat (#9697) that was thin and in poor condition in early May 2012, and continued to deteriorate and lose significant weight through May 24, 2012. Specifically, respondent failed to perform tests recommended by a veterinarian on May 9 and May 23, 2012, failed to diagnose the goat or recommend a treatment plan, and did not weigh the goat between April 23, 2012 (when the goat weighed 168 pounds) and May 14, 2012 (when the goat weighed 139 pounds). After APHIS's inspection on May 24, 2012, a veterinarian determined that the goat had an elevated white cell count and administered antibiotics; on June 1, 2012, a veterinarian diagnosed the goat as anemic and recommended a complete blood count (CBC), which was not performed until June 6, 2012, and at that time revealed that the goat's hematocrit (Hct)¹ was 16.7%. Following the goat's continued deterioration, on June 12, 2012, a veterinarian recommended euthanasia, but as of June 26, 2012, respondent had not euthanized the goat. 9 C.F.R. §§ 2.33(a), 2.33(b)(1), 2.33(b)(2), 2.33(b)(3), 2.33(b)(4), 9 C.F.R. §§ 2.40(a), 2.40(b)(1), 2.40(b)(2), 2.40(b)(3), 2.40(b)(4).

b. September 9, 2011, through June 26, 2012. Respondent failed to provide adequate veterinary care to a goat (#11940) that was diagnosed as anemic on July 27, 2011,

¹Hematocrit is a blood test that measures the percentage of the volume of whole blood that is made up of red blood cells. <http://www.nlm.nih.gov/medlineplus/ency/article/003646.htm>

and a veterinarian had ordered that the goat's Hct be tested on September 9, 2011, the test was not performed, and the goat received no testing or treatment for its condition through June 28, 2012. During inspections on May 24 and June 26, 2012, APHIS inspectors identified this animal as needing veterinary care. 9 C.F.R. §§ 2.33(a), 2.33(b)(1), 2.33(b)(2), 2.33(b)(3), 9 C.F.R. §§ 2.40(a), 2.40(b)(1), 2.40(b)(2), 2.40(b)(3).

c. April 26, 2012, through July 11, 2012. Respondent failed to provide adequate veterinary care to a goat (#14266) that was in poor condition. Specifically, respondent failed to evaluate the goat as recommended by a veterinarian on April 26, 2012, to determine whether the goat had an "immune mediated condition" and should be euthanized, and failed to record any diagnostics or tests or to perform the Hct test ordered by a veterinarian on May 9, 2012. On May 17 and 18, 2012, tests revealed low Hct, and the goat's condition did not improve with antibiotics (given after APHIS's May 24, 2012, inspection), respondent euthanized the goat on July 11, 2012, and respondent discovered that the goat had a lung abscess. 9 C.F.R. §§ 2.33(a), 2.33(b)(1), 2.33(b)(2), 2.33(b)(3), 9 C.F.R. §§ 2.40(a), 2.40(b)(1), 2.40(b)(2), 2.40(b)(3).

d. April 26, 2012, through May 24, 2012. Respondent failed to provide adequate veterinary care to a goat (#15666) that had a history of dermatitis and was in poor condition, and specifically, respondent failed to evaluate the goat as recommended by a veterinarian on April 26, 2012, to determine whether the goat had an "immune mediated condition" and should be euthanized; failed to record any diagnostics or tests or to perform the Hct ordered by a veterinarian on May 9, 2012; when the results of a CBC on May 17, 2012, revealed that the goat's hematocrit was under 20, the goat was not identified as anemic; and as of May 24,

2012, no treatment had been ordered and the goat was still thin, with flaking skin and patches of hair loss. 9 C.F.R. §§ 2.33(a), 2.33(b)(1), 2.33(b)(2), 9 C.F.R. §§ 2.40(a), 2.40(b)(1), 2.40(b)(2).

e. May 14, 2012, through June 6, 2012. Respondent failed to provide adequate veterinary care to a goat (#8947) that sustained a foxtail wound on its right foreleg on or about May 14, 2012. Specifically, respondent treated the wound exclusively with topical sprays and failed to give the goat any pain medication, notwithstanding that the wound was open and “very tender,” and during their May 24, 2012, inspection, APHIS inspectors observed that the goat was lame, and respondent began treating the goat for pain only after that inspection, and respondent euthanized the goat on June 6, 2012. 9 C.F.R. §§ 2.33(a), 2.33(b)(1), 2.33(b)(2), 2.33(b)(4), 9 C.F.R. §§ 2.40(a), 2.40(b)(1), 2.40(b)(2), 2.40(b)(4).

f. April 28, 2012, through June 11, 2012. Respondent failed to provide adequate veterinary care to a goat (#12267) that sustained a rattlesnake bite on April 28, 2012, and following initial treatment, the goat’s condition did not improve, and the goat was not given any further treatment until its death. Specifically, the goat developed a visibly swollen jaw and chest and draining lesion, and experienced a 23% weight loss (24 pounds) between April 28 and May 9, 2012. By APHIS’s inspection on May 24, 2012, the goat was observed to be unable or unwilling to close its mouth, which, in conjunction with the goat’s other visible conditions, indicated that the goat was unable to eat normally. On June 10, 2012, the goat was observed to have labored breathing, but was not euthanized until June 11, 2012. 9 C.F.R. §§ 2.33(a), 2.33(b)(1), 2.33(b)(2), 2.33(b)(4), 9 C.F.R. §§ 2.40(a), 2.40(b)(1), 2.40(b)(2), 2.40(b)(4).

g. May 23, 2012. Respondent failed to provide adequate veterinary care to a thin goat (#15282) with prominent hips, ribs, shoulders, and spine, and respondent failed to notice or document this goat's condition until May 23, 2012. 9 C.F.R. §§ 2.33(a), 2.33(b)(1), 2.33(b)(2), 9 C.F.R. §§ 2.40(a), 2.40(b)(1), 2.40(b)(2).

h. June 26, 2012, through July 3, 2012. Respondent failed to provide adequate veterinary care to a goat (#15493) that was observed to be severely lame, and was housed with other animals and in a manner that did not restrict the animals' movements, and there were no records indicating when the goat was first observed to be lame, the goat's leg had not been splinted or bandaged, and the goat was not seen by a veterinarian until July 3, 2012, a week after APHIS's June 26, 2012, inspection. 9 C.F.R. §§ 2.33(a), 2.33(b)(2), 2.33(b)(3), 2.33(b)(4), 9 C.F.R. §§ 2.40(a), 2.40(b)(2), 2.40(b)(3), 2.40(b)(4).

i. June 26, 2012, through June 28, 2012. Respondent failed to provide adequate veterinary care to a goat (#15704) that was observed to be severely lame, and was housed with other animals and in a manner that did not restrict the animals' movements, and there were no records indicating when the goat was first observed to be lame, the goat's leg had not been splinted or bandaged, and the goat was not seen by a veterinarian until two days after APHIS's inspection on June 26, 2012. 9 C.F.R. §§ 2.33(a), 2.33(b)(2), 2.33(b)(3), 2.33(b)(4), 9 C.F.R. §§ 2.40(a), 2.40(b)(2), 2.40(b)(3), 2.40(b)(4).

j. June 13, 2012, through June 20, 2012. Respondent failed to provide adequate veterinary care to a goat (#6789) that was noted to be thin and in poor condition but was not weighed, and was not seen by a veterinarian until June 20, 2012. 9 C.F.R. §§ 2.33(a), 2.33(b)(2), 9 C.F.R. §§ 2.40(a), 2.40(b)(2).

k. April 10, 2012, through July 9, 2012. Respondent failed to provide adequate veterinary care to a goat (#9459) that had a history of respiratory problems and had lost 21 pounds from 2011 to April 10, 2012. Respondent did not take steps to determine the cause of the weight loss and continued to collect blood from this goat, including on April 12, 2012, and notwithstanding the goat's continued deterioration, as evidenced by swollen forelegs and a nasal discharge, and despite being identified during APHIS's June 26, 2012, inspection as needing further veterinary care, respondent never had tests or a physical examination performed and never developed a treatment plan, and this goat died on July 9, 2012, having received inadequate veterinary care. 9 C.F.R. §§ 2.33(a), 2.33(b)(1), 2.33(b)(2), 2.33(b)(3), 2.33(b)(4), 9 C.F.R. §§ 2.40(a), 2.40(b)(1), 2.40(b)(2), 2.40(b)(3), 2.40(b)(4).

l. June 15, 2012, through June 20, 2012. Respondent failed to provide adequate veterinary care to a goat (#12025) or to communicate health problems to respondent's attending veterinarian; and specifically, the goat was observed to have labored breathing on June 15, 2012, but was not seen by a veterinarian until June 20, 2012. 9 C.F.R. §§ 2.33(a), 2.33(b)(1), 2.33(b)(2), 2.33(b)(3), 9 C.F.R. §§ 2.40(a), 2.40(b)(1), 2.40(b)(2), 2.40(b)(3).

m. August 21, 2012. Respondent failed to provide adequate veterinary care to a thin goat (#9563) with prominent ribs, pelvis, shoulders, and spine, and respondent failed to notice, document, or otherwise address this goat's condition until August 21, 2012. 9 C.F.R. §§ 2.33(a), 2.33(b)(1), 2.33(b)(2), 2.33(b)(4), 9 C.F.R. §§ 2.40(a), 2.40(b)(1), 2.40(b)(2), 2.40(b)(4).

n. July 7, 2015. Respondent failed to provide adequate veterinary care to a goat (#21135) that had been diagnosed with urinary calculi and treated with ace promazine. On

July 7, 2015, at approximately 10:30 a.m., APHIS inspectors found the goat in a depressed posture, unwilling to walk, and breathing heavily. Respondent had no veterinarian available to attend to this animal: respondent's "on-site" veterinarian was on vacation, and respondent's staff could not contact respondent's attending veterinarian, or any other veterinarian who could provide emergency care. By 3:30 p.m., the goat was agonal, suffering and in distress. Respondent failed to follow its own "Standard Operating Procedure" for emergency goat euthanasia, which requires veterinary approval for euthanasia. As no veterinarian was available, respondent's staff used a captive bolt gun alone (without a sedative or secondary euthanasia injection), to effect euthanasia of the goat at approximately 4:15 p.m. 9 C.F.R. §§ 2.33(a), 2.33(b)(1), 2.33(b)(2), 2.33(b)(3), 2.33(b)(4), 9 C.F.R. §§ 2.40(a), 2.40(b)(1), 2.40(b)(2), 2.40(b)(3), 2.40(b)(4).

9. On or about July 7, 2015, respondent failed to handle one goat and two rabbits as carefully and expeditiously as possible in a manner that does not cause trauma, behavioral stress, physical harm and/or unnecessary discomfort, and specifically, (1) respondent failed to attend to a goat (#21135) expeditiously or to address the goat's agonal distress, resulting in the goat's suffering behavioral stress, physical harm, and unnecessary discomfort prior to death, and (2) respondent housed two rabbits in respondent's infirmary in elevated cages with open doors, placing the rabbits at risk, in willful violation of the Regulations applicable to dealers, 9 C.F.R. § 2.131(b)(1), and in violation of the Regulations applicable to research facilities, 9 C.F.R. § 2.38(f)(1).

10. On or about July 7, 2015, respondent willfully violated the Regulations applicable to dealers, 9 C.F.R. § 2.100(a), and violated the Regulations applicable to research facilities, 9 C.F.R. § 2.38(k)(1), by failing to meet the Standards for rabbits, and specifically, respondent placed seven

rabbits destined for blood collection procedures in small wire cages that did not afford the rabbits adequate space within which to make normal postural adjustments or to avoid stepping in their own waste, the cages were stacked on a cart, and the rabbits were held in these cages for over 30 minutes while respondent's employees were on a break. 9 C.F.R. § 3.53(c)(1).

WHEREFORE, it is hereby ordered that for the purpose of determining whether the respondent has in fact willfully violated the Act and the Regulations issued under the Act, this complaint shall be served upon the respondent. The respondent shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.). Failure to file an answer shall constitute an admission of all the material allegations of this complaint. APHIS requests that this matter proceed in conformity with the Rules of Practice governing proceedings under the Act, and that such order or orders be issued as are authorized by the Act and warranted under the circumstances.

Done at Washington, D.C.
this 7th day of Aug 2015



Administrator
Animal and Plant Health Inspection Service

COLLEEN A. CARROLL
Attorney for Complainant
Office of the General Counsel
United States Department of Agriculture
1400 Independence Avenue, S.W.
Room 2014 South Building
Washington, D.C. 20250-1400
Telephone (202) 720-6430; 202-690-4299 (Fax)
e-mail: colleen.carroll@ogc.usda.gov